IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Raga Ram vs. Mst. Kokali & ors.

S.B.Civil Misc. Appeal No.1414/2005 against the order dated 6.9.2005 passed by the learned Judge, Motor Accident Claims Tribunal, Bali camp Sumerpur in Civil Misc. Case No.35/2003.

Date of Order: December 22, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J

Mr. Shambhoo Singh for the appellant.
Mr. N.S. Rajpurohit for the respondents.

This appeal is against the order dated 6.9.2005 passed by the Motor Accident Claims Tribunal, Bali camp Sumerpur District Pali in Misc.Case No.35/2003. By this order, the Tribunal dismissed the applicant-appellant's application moved under Order 9 Rule 13, C.P.C. for setting aside of the award dated 23.11.1998.

Brief facts of the case are that due to death of one Sika Ram which took place on 8.10.1992, the claim petition was filed by the descendants of said Sika Ram claiming compensation of Rs.7,30,000/-. The appellant and his son has been impleaded as party in the claim petition because of the reason that according to the claimants the appellant was the owner of the vehicle and his son Mohan Lal was the driver. Two other persons Chuna Ram and Deva Ram were also

impleaded in the claim petition stating that Deva Ram is also driver sitting with the driver Mohan Lal and Chuna Ram is also owner of the vehicle.

The Tribunal issued notice of the claim petition which alleged to have been served upon Mohan Lal and Raga Ram. Mohan Lal signed the notice and Raga Ram put his thumb impression on the back of the copy of notice. Neither the appellant Raga Ram appeared nor his son Mohan Lal appeared before the Tribunal and the Tribunal proceeded ex parte. The Tribunal vide award dated 23.11.1998 awarded compensation of Rs.2,95,000/-.The award was passed against above Raga Ram and the other non-applicant No.3 and 4. The Tribunal dismissed the claim against the appellant's son Mohan Lal and as no particulars of the Insurance Company was submitted, therefore, the claim against unknown Insurance Company was also dismissed.

The applicant-appellant submitted application under Order 9 Rule 13, C.P.C. before the Tribunal on 19.8.2003.The appellant alleged that the notice of the claim petition was not served upon him. He stated that he came to know about the award when he received a notice on 10.7.2003 for recovery of the claim amount from the appellant. Thereafter he obtained copy of the award and submitted this application.

In the application, it is alleged that though he entered into the

agreement to purchase the tractor in question from the registered owner of the vehicle and he submitted application for delivery of the tractor to him in the criminal proceedings on the basis of the agreement for purchase of the tractor but in fact he is not liable to any compensation because of the fact that despite payment of consideration for the tractor, the owner of the vehicle sold the tractor to one Chuna Ram and at the relevant time, Chuna Ram was the registered owner of the vehicle and his partner was driving the vehicle. It is alleged that he never received notice of the claim petition and the thumb impression on the notice of the appellant are not of the appellant.

The application was seriously contested. Both the parties led evidence. In the trial court, the applicant-appellant also prayed for getting the opinion of the thumb impression for the alleged thumb impression over his notice. The expert opined in favour of the applicant-appellant. Even after opinion of the expert, the court below dismissed the application of the appellant for setting aside of the award vide order dated 23.11.1998. Hence this appeal.

The learned counsel for the appellant submitted that the finger print expert opined that the notice sent to the appellant bears no thumb impression of the appellant. It is also submitted that the appellant was not the owner of the vehicle at the relevant time, therefore, he was not liable to pay compensation. It is also submitted

that the appellant gave his statement and in view of the statement of the process server himself also, it is clear that the notice of the claim petition was not served upon the appellant. The learned counsel for the appellant further submitted that Hon'ble the Apex Court in the case of G.P. Srivastava v. R.KRaizada & ors. (RLW 2000(1) SC 125) held that in such matters discretion is normally exercised in favour of the parties seeking setting aside of the order and unless it is case of mala fide or intentional on discloser of sufficient cause of non-appearance and where party was not negligent and, the other side could have been compensated by cost ad the ex parte decree-order may be set aside.

The learned counsel for the respondents claimants vehemently submitted that in claim case of the year 1992, the award was passed after service of all the non-applicants including the appellant. It is also submitted that the appellant was impleaded as owner of the vehicle and it is admitted case that he himself purchased the vehicle in question before the accident and admitted that he paid the consideration to the registered owner of the vehicle and who executed agreement for sale of the vehicle in his favour. The appellant himself knew about the accident and launching of the criminal case.

The tribunal, after carefully considering the notice which was sent to the appellant-applicant Raga Ram and also the expert report for thumb impression, held that the notice was served upon Raga Ram

personally and his son was also party who was also served with the notice and the appellant-applicant had full knowledge of the claim and the appellant and his son both did not appear. In view of the above, the court below dismissed the appellant's application filed under Order 9 Rule 13, C.P.C.

I considered the submissions of the learned counsel for the parties and perused the facts of the case.

More emphasis of the learned counsel for the appellant is that the Finger Print Expert has given opinion in his favour and clearly stated that the thumb impression on the notice is not of the appellant. It is also submitted that lenient view may be taken. It is clear from the facts on record that the expert though was permitted to give opinion about the thumb impression available on the notice in question but the opinion given by the expert cannot be relied upon because of the simple reason that the expert has not followed the procedure for obtaining the thumb impression of the person whose thumb impression he was to examine with the thumb impression available on the notice. The Finger Print Expert compared the thumb impression of Raga Ram which were available on the notice in question and which was marked as Q-1 with the thumb impression taken from the Vakalatnama of Raga Ram which was marked as S-1 and thumb impression of Raga Ram taken from the affidavit which was marked as S-2 and S-3. It was not the admitted case

of the respondent that thumb marks of Vakalatnama and affidavit are of Raga Ram. The proper procedure was that the Finger Print Expert should have obtained the thumb impression of Raga Ram himself in the court in the presence of the Presiding Officer of the Motor Accidents Claims Tribunal and thereafter he should have compared the alleged thumb impressions of Raga Ram on notice in dispute. Be it as it may be, apart from that that, the court below after considering expert's opinion, rejected that opinion. The other circumstances which have been not explained by the appellant-applicant are that the notice of some date of the claim petition was served upon his own son who put his signatures on copy of notice and he failed to disclose the conduct of his son, how he did not appear and did not inform the appellant-applicant about receiving notice of claim petition particularly when admittedly, the appellant himself got the vehicle released from the court and claimed that he is owner of the vehicle.

In view of the detailed reasons given by the court below, I do not find any illegality in the impugned order. Hence the appeal of the appellant deserves to be dismissed because of the reason that liberal view to this extent cannot be taken so as to cause unnecessary delay in the decision of the accidental claim cases when the case set up by the parties seeking setting aside the ex parte award is factually wrong, therefore, the judgment relied upon by the learned counsel for the

appellant delivered in the case of G.P. Srivastava v. R.K.Raizada & ors. (RLW 2001(1) SC) cannot help the appellant.

Hence, the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

mlt.